

Service Date: August 12, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER Of the Application)	TRANSPORTATION DIVISION
of Diane Jeannette Masciullo)	
dba The Northwest Connection,)	DOCKET NO. T-93.48.PCN
Polson, Montana for a Montana)	
Intrastate Certificate of Public)	ORDER NO. 6216a
Convenience and Necessity.)	

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Diane Jeannette Masciullo, dba The Northwest Connection,
P.O. Box 481, Polson, Montana 59860

FOR THE PROTESTANTS:

Kevin Paul Cunningham, dba Port Polson Taxi Service, 768
Rocky Point, P.O. Box 624, Polson, Montana 59860

Kenneth J. Verlanic, Intermountain Transportation Company,
7-9 Main Street, P.O. Box 520, Anaconda, Montana 59711

FOR THE COMMISSION:

Denise Peterson, Staff Attorney, Wayne Budt, Director of
Transportation Division, 1701 Prospect Avenue, P.O. Box
202601, Helena, Montana 59620-2601

BEFORE:

BOB ROWE, Vice Chairman and Hearing Examiner

Pursuant to 2-4-621, MCA, a proposed order authorizing a grant of authority requested was issued in this matter on July 9, 1993. No exceptions, briefs or requests for oral argument have been received. Therefore, the Montana Public Service Commission (Commission) adopts the proposed order as its final order in this matter.

BACKGROUND

1. On March 24, 1993 the Montana Public Service Commission received an application from Diane Jeannette Masciullo dba as The Northwest Connection (Ms. Masciullo or Applicant) for a certificate of public convenience and necessity. Applicant requested a grant of Class B - tour authority (occasional) and Class A - commuter bus authority to haul people and parcels between the towns of Polson and Ronan, Montana on Route 93. Applicant withdrew the request for tour authority, amending the application to read Passengers and Express, Class A between Polson and Ronan.

2. The Commission duly published and issued notice of the application. Protests were filed in response to the notice by Intermountain Transportation Company, Anaconda, Montana (holding

PSC No. 31); Valet Limousine, Inc., Missoula, Montana (holding PSC No. 7172); and Kevin Paul Cunningham dba Port Polson Taxi Service, Polson, Montana (holding PSC No. 9218).

3. Valet Limousine withdrew its protest upon a stipulation that Ms. Masciullo would not provide limousine service.

4. On May 26, 1993 the Commission conducted a duly noticed public hearing, commencing at 9:30 a.m. at the Lake County Courthouse, Polson, Montana.

SUMMARY OF TESTIMONY

Applicant's Testimony

5. Boyd Vandeburg, Polson, Montana appeared and testified in support of the application. He manages the NAPA store in Polson and works closely with the NAPA store in Ronan. Trying to get parts back and forth can be difficult. It would be advantageous to have scheduled express service several times a day, he testified. On cross-examination from Kevin Cunningham, Port Polson Taxi Service, Mr. Vandeburg admitted that he had not talked to Port Polson, figuring a taxi would be too expensive for express. He testified that he has used Pelican Express to get parts from Missoula but was unaware of Maughan Express. Inter-mountain Busline cannot meet his needs in its evening hours.

6. Larry Bartels, Ronan, Montana also testified in support of the application. He owns a NAPA store in Ronan, a business built on service. If the NAPA stores do not have a part they will buy from each other to sell. He has used Maughan Express to Missoula. Pelican Express goes to St. Ignatius once a day. He has used Intermountain's express service. But he testified that he particularly needs the three times a day service at the times proposed by the Applicant.

7. Diane Masciullo, Applicant, testified in support of her application and sponsored 12 exhibits, which included her March 23, 1993 letter, a list of her contacts, letters of support, a letter from Salish Kootenai College with forms filled out by students, an equipment description, insurance quotation, financial statement, a letter from her bank, a letter from Montana Women's Economic Development Group (Wedgo), a proposed tariff, and several more letters of support. All exhibits were admitted, with the support letters admitted for the limited purpose of demonstrating community support.

8. Under examination Ms. Masciullo testified to the following. She has taken out a personal loan of \$6,000 on a 1987 12-passenger van. The bank has not stated interest yet, pending resolution of these proceedings. Ms. Masciullo sponsored a

letter from Wedgo which stated support for a \$7,500 business loan for the proposed shuttle service, funds to be released upon receiving authority from the Commission. Ms. Masciullo's projected cash flow demonstrated how she would make her payments.

9. On cross-examination, Ms. Masciullo testified that she calculated she would need 3.12 people one way per trip to meet the cash flow in her projections. The vehicle she is purchasing has 78,000 miles. A mechanic has checked it out. She expects to use it for a time and then acquire a new vehicle. The cost of three round trips per day between Polson and Ronan will be \$49 per day, assuming 12-13 customers per day, to make monthly expenses. Her proposed service would be the only service on a scheduled route, three times a day, she testified.

10. Anita Hansen, Polson, Montana, appeared and testified in support of the application. She is the case manager and supervisor for a jobs program, Options Unlimited, a nonprofit "welfare to work" program to enable single parents to become self-sufficient and get off AFDC. Ms. Masciullo's goal is to be self-employed. Ms. Hansen testified that there is a large need for her clients, who have barriers and/or no vehicles, to use public transportation as proposed. These people need to come to Polson to meet with her. They need to work on their General

Equivalency Diplomas. The taxi service does not meet the needs of her clients, as it is too expensive. The bus runs only once a day and is viewed as serving Missoula, she testified.

11. Under cross-examination, Ms. Hansen admitted that she had not contacted the taxi for service and was unaware of the taxi company. It is the responsibility of the taxi service to let the community know what a taxi service is, she stated. She testified that she has spent money on supportive services for her clients, including transportation. She also testified that she would use the service herself.

12. Howard D. Terry, a management consultant contracting with Wedgo, testified in support of the application. He testified that the clients are thoroughly prepared and undergo extensive procedure to make sure they are successful. The clients are required to seek out technical assistance and go through every procedure to analyze the market and cash flow. He testified that Ms. Mascuillo demonstrated her commitment to the project in obtaining independent financing through an unusual relationship with her bank. She obtained a one-year note on her word, showing that bankers believe in her integrity.

13. According to his testimony, Mr. Terry's background includes experience in the transportation area. He grew up in

"transportation" with his family-owned trucking company. He is still on the board of directors. He studied transportation management and worked as a consultant on the shippers' side. He had observed that there is a need for this kind of service in the Polson/Ronan area. He also works for the Salish Kootenai Cultural Center (the "People Center") at Pablo. In both the JOBS program and the People Center there are unmet transportation needs, with many hitchhiking or using vehicles in disrepair. In the college/tribal complex, he testified, students have no way to return in the middle of the day without Ms. Masciullo's service.

14. Mr. Terry testified that he has seen the vehicle with which Ms. Masciullo would start her business. He is on the board of directors for a leasing company with a 400 vehicle inventory.

He guesses that the vehicle was used as an airport shuttle. As proposed, Ms. Masciullo would use the vehicle 6-12 months, putting about 20,000 miles on it, and then use it as a back-up when she gets a new van. Mr. Terry testified that the loan from Wedgo for \$7,500 would let her get started. The interest rate is higher than at banks, which is why she got financing through the bank. The asset base for the business is the vehicle.

15. Under cross-examination, Mr. Terry said that though he resides in Florence, Montana, he works in Polson and would use

the service as he goes to Pablo from Polson. He also discussed the turnover rate of fleet vehicles, stating that they are normally turned over every five years, but some as often as every nine months. there is a big secondary market for late model vehicles.

16. Debbie DeMarais, Pablo, Montana, appeared and testified in support of the application. She is the housing coordinator and resident director of the Flathead Salish Kootenai College. She testified that she would use the service. The college buses used to be too full, so she used her own car and picked up hitchhikers. She believes the proposed service would complement existing service. She has observed a lot of students hitchhike from Pablo to Ronan. Their cars break down and they cannot afford a taxi. She stated that students could not attend because of final exams. They were under the impression that she could speak for the students.

Protestants' Testimony

17. Protestant Kenneth J. Verlanic, Anaconda, Montana, appeared and testified opposing the application. He is the President of Intermountain Transportation Company, Anaconda, Montana, which holds Class A and Class B passenger and express

authority in western Montana under PSC Certificate No. 31. Mr. Verlanic testified that he viewed the proposed service as "diversionary," that is the loss of two to three people per scheduled trip would have a significant impact on Intermountain. The transportation industry is razor thin, with a profit ratio of 1 percent. There are four to five other competitors, not counting UPS, he testified, which is a lot of available service. One more carrier would dilute the market even further.

18. Intermountain tried two trips daily in 1992, Mr. Verlanic testified, and had to curtail because there was not enough business. In Intermountain's schedule for the proposed area, a bus leaves Polson at 12:00 p.m., with stops at Pablo at 12:10 p.m. and Ronan at 12:22 p.m. For the evening route, the bus leaves Ronan at 6:50 p.m., arrives in Pablo at 7:10 p.m. and in Polson at 7:20 p.m. At most, one or two ride the bus per trip between Polson and Ronan. Most take the bus from Ronan to go long distances, not as a commuter service. Under further examination by the Commission, Mr. Verlanic stated that Intermountain provides service to 200 - 400 passengers per day, and only 5 or 6 per month between Polson and Ronan. The fare one-way between the two towns is \$4.50.

19. Protestant Kevin Paul Cunningham, dba Port Polson Taxi

Service, Polson, Montana appeared and testified in opposition to the application. He testified that he got his authority (PSC Certificate No. 9218) on October 7, 1992. The previous taxi service failed. He believes that it is important to maintain the taxi service as it exists today. He testified that he offered taxi shuttle service between Polson and Ronan, advertising and dropping leaflets at the "Salish" college for its seven to eight information boards. Unlike the fixed route service, taxi service is flexible in where it can pick up and drop off. Assuming a full-passenger load for the shuttle service, Mr. Cunningham testified that he could have done a round-trip of \$6.50 per person. No one responded to his advertised shuttle service. Mr. Cunningham submitted as an exhibit "The Advertiser," January 27, 1993, with an advertisement for "Share a Taxi Shuttle Service." The advertisement preceded his application for additional authority filed March 23, 1993. As granted, his amended authority allows a radius of 70 miles (not 25) from Polson and a 10 passenger limit. As he envisioned the service, it required full occupancy (six passengers) at \$6.50 round trip per person.

20. Mr. Cunningham testified that he does a hospital run twice a week. He does quick calls, including emergencies to Ronan. He stated that the proposed service would hurt his

business. Under cross-examination, Mr. Cunningham testified that Ronan is one of his major outlying service areas. He still offers the shuttle service, and responded that it would have to be scheduled on a regular time schedule such as three months or a school semester. It would be inexpensive, depending upon the number to use the service (charged on a full taxi basis, divided by the number riding).

21. Under examination by Commission staff, Mr. Cunningham testified that 25-30 percent of his taxi business is between Polson and the Pablo/Ronan area. The shuttle service is a new service he offered and advertised for the first time one week before the January 27 newspaper ads (Prot. Exhibit 1). He has not advertised regularly since, as he received no response after spending \$14. He further testified that he does handle express between Polson and Ronan at the rate of \$4 to pick up and \$1 per mile to deliver.

22. Mr. Cunningham testified under cross-examination to the following. When he received his additional authority for 10 passengers, he intended to reoffer his "share a ride" for full occupancy. Since he has offered taxi service he has never lost ridership because he could not handle the service. He has a 1987 Subaru and a 1992 Dodge Caravan. He is trying to lease another

1993 Dodge Caravan for tours and airport shuttle service. Now he does 85-90 percent of the driving, serving from 7:00 a.m. to 2:30 a.m. seven days a week. He may hire more employees, depending on response. He is dispatched by cellular telephone and has a few blind spots in the area. He is afraid he will lose the patronage of the twice weekly service of a handicapped lady to therapy in Ronan (\$200 - 300 per month), if this application is granted.

Public Testimony

23. June Hermanson, Polson, Montana, appeared and testified as the local coordinator for the Transportation Advisory committee of the Department of Transportation (DOT). The Committee identifies transportation needs and available vehicles. the Committee has identified 27 vehicles to handle a variety of transportation services, including 12 vehicles for the Salish Kootenai tribe.

DISCUSSION AND FINDINGS

24. Pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA) the Commission supervises and regulates intrastate motor carrier service. . 69-12-201, MCA. The maintenance of an adequate common carrier motor transportation system has been declared a public purpose. . 69-12-202, MCA. To obtain motor carrier operating authority requires an application to the Commission and a hearing whenever a protest is filed or a request for a hearing is received. . 69-12-321, MCA.

25. Section 69-12-323, MCA, governs the requirements for a Commission decision on whether an application should be granted.

(2) (A) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service may have upon other forms

of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

26. The Commission has interpreted . 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

- a. Is the applicant fit and able to perform the proposed service?
- b. Does the public convenience and necessity require the authorization of the proposed service?
- c. Can and will existing carriers meet the public need for the proposed service?
- d. Would the proposed service have an adverse impact on existing transportation service?

27. In answering the first question (paragraph 26), the Commission finds that Applicant is fit and capable of providing the proposed service. Ms. Masciullo has "done her homework." She has identified a specialized service not provided by others.

She has prepared extensive paperwork documenting her financial analysis which shows that the proposed service would be a profitable concern. On her own credit, she has obtained advance financing for a vehicle satisfactory to provide this service.

She has had the assistance of expert consultants in financing and transportation, such that she has satisfied Wedgo to give her a business loan of \$7,500 upon receiving authority. Upon her testimony and that of her experts, the Commission finds that she has fulfilled the threshold requirement of fitness.

28. In determining public convenience and necessity, the Commission has traditionally followed the analysis of Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936).

The question in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 1 M.C.C. at 203.

29. In answering the second question concerning public convenience and necessity, the Commission finds, based on the record, that the new operation or service will serve a useful public purpose. Testimony supports a need for three times a day Class A fixed route passenger and express service between Polson and Ronan. Shippers (NAPA stores) in both Ronan and Polson sponsored witnesses who testified as to the need for the express service. There were also letters showing community support.

Several witnesses testified that they would use the service. In particular, Debbie DeMarais, Flathead Salish Kootenai College housing coordinator, testified that she would use the service as would many students (17 sponsored statements through her). From her position she testified as to the need she had observed for shuttle service on this fixed route. The Applicant has demonstrated that the public convenience and necessity require the proposed service.

30. In determining whether existing carriers can and will meet the public need for the proposed service (#3, paragraph 26), the Commission finds that the proposed service fits a unique need not met by existing carriers. The bus line Intermountain only passes through one way at noon and the other way at about 6:00 p.m. Although it tried a second run in the area, it curtailed it for lack of use. However, Intermountain is perceived as a long distance bus and the additional run was not geared specifically to the Polson/Ronan area. The limited use of Intermountain's second run can be attributed to its larger service area. At most, Intermountain had only five or six passengers per month one-way on the Polson/Ronan leg of its route. According to testimony, passengers in the area use the bus service for longer trips. The bus did not advertise as a shuttle service.

31. Port Polson Taxi Service attempted to create a shuttle service as advertised. This service would not have met the specialized needs for shuttle service as proposed by Applicant. Passengers would be required to sign up for a long period of time by full-occupancy carload. This solution apparently was not a practical proposal as it received no interest or response. Also, from a practical standpoint, this Protestant is on-call 19 1/2 hours per day for taxi service as the sole driver. Although he might hire other employees, it does not seem practicable to handle a fixed time shuttle service along with his taxi service.

There is also a question of whether his authority and tariffs can be stretched to cover this kind of service. Certainly, he cannot take a few passengers on this trip at a fixed time from a fixed place at shuttle service rates.

32. The final question in paragraph 26 is whether the proposed service would have an adverse impact on existing transportation service. For Intermountain, the answer is no. Out of its 6,000 to 12,000 passengers per month, only 5 or 6 take a one-way trip between Polson and Ronan. With its authority throughout western Montana, this small leg of its route and the few passengers are a minuscule portion of its business.

33. Port Polson Taxi Service has claimed that it would be

harm. The taxi service has expanded authority to a 70 mile radius and to 10 passengers. It cannot offer this narrow specialized fixed route service easily under its tariffs and perform taxi service, too. Neither can the three times a day shuttle service perform the services of a taxi. The kinds of passengers are not the same. Those who would use Applicant's proposed service have not been using and would not use taxi service. It is difficult to imagine traditional taxi passengers flocking to a shuttle service location. Therefore, the Commission determines that existing carriers will not be adversely affected by the proposed service.

34. The Commission determines that the public convenience and necessity requires the proposed service. Existing carriers cannot provide the service as well, given limitations of their authorities, tariffs and routes. This authority will not adversely affect the existing transportation service. The Commission determines that the authority should be granted.

CONCLUSIONS OF LAW

35. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.

36. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.

37. Applicant has demonstrated a public demand or need for the proposed service, and has demonstrated that existing carriers cannot meet that demand or need as well.

38. Applicant has demonstrated fitness to provide the proposed service.

39. The proposed service, as amended would not have an adverse impact on existing transportation service.

ORDER

NOW THEREFORE IT IS ORDERED THAT THE APPLICATION IN Docket No. T-93.48.PCN shall be GRANTED for the following authority:

Class A - Passengers and express between
Polson, Montana and Ronan, Montana serving
all intermediate points.

LIMITATION: Transportation by limousine
service is prohibited.

IT IS FURTHER ORDERED that the Applicant must, within thirty (30) days of the mailing of the notice of the rights herein granted comply with all rules and regulations of the Montana Public Service Commission.

Done and Dated this 9th day of August, 1993 by a vote of 5- 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.